

OFFICE OF THE GENERAL COUNSEL  
Division of Operations-Management

MEMORANDUM OM 96 -87

December 23, 1996

TO: All Regional Directors, Officers-in-Charge  
and Resident Officers

FROM: B. Allan Benson  
Acting Associate General Counsel

SUBJECT: Irwin Industries, Inc.  
Cases 31-CA-20526, et al.

The Respondent in this case is engaged in the business of performing maintenance, repair, and construction work for oil refineries and utility companies. As set forth in the recently issued ALJ decision, JD(SF)-55-96, the International Brotherhood of Boilermakers, Iron Ship Builders, Blacksmiths, Forgers and Helpers, AFL-CIO has targeted the Respondent for inclusion in its organizing program, named "Fight Back," as a non-union employer. As part of this campaign, the employees in one of Respondent's crews on the night shift, Gary Evenson, Kyle Evenson, Willard Youngblood and Roger Womack, provided Respondent with a document announcing that they were the Boilermakers' organizing committee on the project and placed union insignia on their clothes and hats. During the night shift immediately thereafter, this crew performed only three welds rather than the 6 to 12 normally expected. Respondent reacted by laying off the entire night shift for low productivity. The charge at issue alleged that these layoffs were in retaliation for the crew's newly announced organizing activity.

The ALJ dismissed this Section 8(a)(3) allegation and found that the crew had engaged in a deliberate job slowdown which began with the Boilermakers' decision to begin a "fight back" strategy against Respondent. The evidence found by the ALJ, based on testimony as well as photographs taken by Respondent, shows that these four individuals notified the Employer of their intent to engage in Union organizing activity, and immediately afterwards engaged in a deliberate work slowdown which they falsely denied. The ALJ concluded that the Union and the four individuals named above, abused the Board's processes by manufacturing an unfair labor practice violation. He found that this allegation of discriminatory discharges was a "bogus charge," that it was "frivolous, knowingly false," and that it had been "contrived in order to cause the

Respondent to expend considerable resources in defending itself before the Board.” Counsel for the General Counsel did not file exceptions to these findings.

Given the nature of the industry and salting cases in general, it is possible that one or more of these four individuals may be witnesses in pending or future unfair labor practice charges filed in other Regional Offices.<sup>1</sup> If this occurs, the Region should familiarize itself with this ALJD in order to assist in determining the nature of the investigation and/or in making credibility determinations, if appropriate.

If you have any questions, please contact your Assistant General Counsel.

B.A.B.

cc: NLRBU

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<sup>1</sup> Some of these individuals have been witnesses and/or alleged discriminatees in past cases.